

September 29, 1995

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
700 Central Building
810 Third Avenue
Seattle, Washington 98104

REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL.

SUBJECT: Department of Public Works
Roads and Engineering Division File No. **V-2188**
Proposed Ordinance No. **95-523**

PETITION FOR ROAD VACATION

Road: Portions of Division Street (91st Place
S.W.) south of S.W. Summerhurst
Road (S.W. 278th Street), if
extended, on Maury Island

Petitioners: CLIFFORD AND EILEEN FREED
AND OTHERS

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Approve
Division's Final:	Approve
Examiner:	Remand to Department of Public Works

DIVISION'S REPORT:

The Roads and Engineering Division's written report to the King County Hearing Examiner for Item No. V-2188 was received by the Examiner on August 9, 1995.

PUBLIC HEARING:

After reviewing the Roads and Engineering Division's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2188 was opened by the Examiner at 9:30 a.m., August 23, 1995, in Room No. 2866, Jackson Federal Building, 915 Second Avenue, Seattle, WA 98104, and was continued for administrative purposes at 11:47 a.m. Pursuant to the administrative continuance, the Hearing Examiner received and entered into the record the correspondence, maps, and photographs identified as Exhibit Nos. 63 through 71, as listed in the minutes of the public hearing. In addition, the Examiner received and entered into the record the memorandum dated September 20, 1995, from the King County Department of Public Works, concerning limitations on vacations of streets abutting bodies of water, together with copies of portions of Chapters 36.87 and 35.80, RCW, and a memorandum from the King County Prosecuting Attorney, dated October 19, 1993. On September 22, 1995, the Examiner declared the public hearing to be closed. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:
Road name and location: Portions of Division Street
(91st Place S.W.) south of
S.W. Summerhurst Road
(S.W. 278th Street), if
extended, on Maury Island

Right of way classification: C
Area: 9,486 square feet
Compensation: \$15,645.13, or dedication of
other property of equal or
greater value, for road
purposes

2. Petitioners Freed are the owners of Tax Lots 35, 96, and 45 in Section 32, Township 22, Range 3 EWM. (See map at page 3 of this report.) The petitioner's property and the adjacent portions of S.W. Division Street sought to be vacated are at the top of a bluff overlooking Puget Sound to the east. Petitioners Freed also own the adjacent 50 feet of the north half of Lot 5 and the adjacent 50 feet of Lots 6, 7, and 8, Block 1, of Avilion Tracts, which abut the east margin of S.W. Division Street. Petitioners Teodoro and Pierson own Lots 10 and 11, Block 1, of Avilion Tracts, extending from the east boundary of Division Street to Puget Sound.
3. The area sought to be vacated, shown by cross-hatching on the map, consists of approximately 5,250 square feet in the southerly segment (adjacent to Lots 5, 6, 7, and 8) and approximately 3,901 square feet in the northerly segment (adjacent to Lots 10 and 11). The Freed residence, patio, and lawn area are located largely within the right-of-way of the northerly segment of Division Street sought to be vacated. An agreement between Freeds and the owners of Lots 10 and 11 would provide for conveyance of that segment of Division Street, together with additional portions of Lots 10 and 11, to Freeds, thereby providing title to the land upon which their improvements are located.
4. Numerous property owners in the area, primarily the owners of waterfront lots within Block 1 of Avilion Tracts (Summerhurst) and Shore Acres object to the petition. The affected owners have no legal overland access to their lots other than Division Street. The proposed vacation would eliminate that access to 34 platted lots in Shore Acres and 10 in Summerhurst. In addition to the loss of legal access, they are concerned with the elimination of Division Street as a possible route for utilities (sewer and water) to serve the lots to the south, and the vacation of a road which they consider to be abutting a body of water.
5. Owners of the Summerhurst beachfront lots have physical access to their properties by driving to a private parking area near the east terminus of S.W. Summerhurst Road. From the parking area they can walk to the beach along county right-of-way which terminates at Puget Sound. From the road terminus, they walk along the beach (across private property) to their lots. Property owners whose lots are further south (primarily residents of Shore Acres) drive along Point Piner Road from its intersection with S.W. Summerhurst Road to a parking area further south, from which they cross private property to gain access to a beachfront walk (which also crosses private property), enabling them to reach their lots by foot.

Summerhurst and Shore Acres property owners would lose the only dedicated access to all lots lying south of Lot 11, Block 1, of Avilion Tracts as a result of the proposed vacation. Although Division Street as currently platted is not suitable for construction of a public road, and is unlikely ever to be developed as a roadway, pedestrian and utility use of the right-of-way is possible.

6. The subject property is not within the existing service areas of the Vashon Sewer District or the Dockton Water Association. However, these are the only existing purveyors of sanitary sewer service and domestic water supply which could reasonably serve the Summerhurst and Shore Acres lots. Although there are no current plans to provide service, the need for utility extensions in the future is reasonably likely. The best route for extension of services to the lots lying east and south of the Freed property could be

- along and/or across the Division Street right-of-way. The petitioners have offered to provide easements which would reasonably provide for any utility extensions which might otherwise be adversely affected by the proposed vacation. The easements offered would satisfy the public interest in assuring that the proposed vacation not hinder the provision of utility services to other properties.
7. RCW 36.87.130 limits the county's authority to vacate roads abutting bodies of water. That section provides, "No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless..."
In a 1970 opinion, the State Attorney General advised that the term "abuts" means contiguous, that is, touching, both on the lateral edges of a county right-of-way and the terminal end of such a right-of-way. The King County Prosecuting Attorney has advised the Department of Public Works that RCW 36.87.130 applies only when the vacation area itself touches upon a body of water. That is not the situation with respect to this proposed vacation, which would affect an area of S.W. Division Street which does not abut either fresh or salt water.
 8. The Freeds have offered, in exchange for vacation of Division Street, to provide King County with a deeded right-of-way for that portion of Point Piner Road which crosses Tax Lot 96. King County currently holds only a right-of-way by prescription across Tax Lot 96, as that segment of Point Piner Road was never dedicated or deeded to the County. Point Piner Road does not provide a connection to Division Street, but generally parallels Division Street approximately 160 feet west of the platted right-of-way. During the administrative continuance, in a letter to the Examiner dated September 12, the Freeds also offered to convey to area property owners a 30-foot-wide road easement along the south boundary of Tax Lot 45 and the east boundary of Tax Lot 96. This easement would connect Division Street with Point Piner Road. The easement offered would run to identified property owners because King County has expressed no interest in acquiring a new road to replace Division Street. Petitioners also assert that the county would be unlikely to accept the proposed right-of-way for maintenance as a King County road. The easement proposed by the petitioners contains conditions; there is no indication as to whether or not the proposed easement would be acceptable to the affected property owners.
 9. State law provides that if a county road sought to be vacated is "found useful as a part of the county road system", it shall not be vacated, but if it is not useful and the public will be benefitted by the vacation, the legislative authority may vacate the road or any portion thereof. RCW 36.87.060(1).

CONCLUSIONS:

1. Vacation of a public right-of-way is a discretionary act of the Council. If the road sought to be vacated is found useful as a part of the county road system, vacation is prohibited. If it is not useful and the public will be benefitted by the vacation, action to vacate the right-of-way is permitted, but not required.

An opinion of the State Court of Appeals for District 2 states, "The statutory test is not whether the road is of use to anyone, but whether it is useful as part of the county system. The public to be benefitted includes all taxpayers of the county, who deserve to be relieved of the burden of maintaining a road of such limited utility". Bay Industry v. Jefferson County, 33 Wn App 239, 241-42. King County has no plans for future improvement or maintenance of S.W. Division Street in the vicinity of the proposed vacation, and the Department of Public Works recommends vacating the right-of-way. The determination by the Department of Public Works, that the road sections sought to

be vacated are not useful as part of the county road system, should be accorded substantial weight.

However, the record does not indicate that the Department considered the legal and financial implications of elimination of the only dedicated overland access to approximately 44 platted lots. In the Jefferson County case, the court explicitly noted that vacating the road in issue did not landlock the appellant because it had another access, although difficult, by another county road.

Ibid, p. 241.

The Summerhurst property owners who have no legal access to their properties other than by way of S.W. Division Street constitute a significant part of the public whose interests must be protected by the King County Council in acting upon a petition for street vacation. Elimination of the only existing legal access to their properties would constitute landlocking those properties, which would not be in the public interest and would constitute a deprivation of existing property rights. The viability and acceptability of alternative access by private easement across the Freed property has not yet been demonstrated to be a reasonable alternative legal access, nor is there evidence that it is acceptable to the property owners for whose benefit the easement is proposed to be granted. Until an alternative legal access is deeded, dedicated, or otherwise provided for those lots, I conclude that the areas sought to be vacated are useful as part of the county road system for the purpose of providing the sole legal overland access to approximately 44 waterfront lots lying south of the area proposed to be vacated, and vacation of the portions of S.W. Division Street which are subject to this petition would not be in the public interest.

2. The testimony and correspondence from all parties to this proceeding indicates a mutual desire to assist the Freeds in "legalizing" the location of their house, so long as the reasonable interests and rights of other property owners are not infringed upon.
3. Dedication of a portion of Point Piner Road, offered by the petitioners Freed and acceptable to the Department of Public Works as compensation for the proposed vacation, would be a benefit to King County, but does not provide an alternative or replacement legal access to those lots which would lose their sole legal access by the proposed vacation of portions of S.W. Division Street.
4. The utility easements offered by the petitioners would provide equivalent or better opportunity for the extension of water and sewer service to the Summerhurst and Shore Acres properties than is available by utilization of the existing right-of-way for S.W. Division Street.
5. The petition for vacation of portions of S.W. Division Street should be remanded to the King County Department of Public Works to develop with the petitioners and affected property owners an alternative method for providing legal access to those lots whose present sole legal access would be terminated by this vacation. In the alternative, the petition should be denied.

RECOMMENDATION:

REMAND the petition to the King County Department of Public Works to develop, in consultation with the petitioners and other interested persons, a proposal which assures continuity of legal access to all affected properties. A report with a recommendation based upon such plan, or a statement to the effect that no such plan is feasible, should be submitted by the Department to the King County Hearing Examiner and all interested persons on or before December 31, 1996. In the absence of such report, this petition shall be deemed denied without further action.

RECOMMENDED this 29th day of September, 1995.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 29th day of September, 1995, to the following parties and interested persons:

Thad & Nancy Clark	Norman W. Doane
William D. Ebright	Clifford & Eileen Freed
Ronald Greene	Elbert & Ione Honeycutt
Frances Honeycutt	Fred Kaseburg
Kenyon Luce	Lester Pedersen
Larry & Charlotte Pendergast	Donald & Jean Pierson
Mayo & Francis Prentice	Robert J. Rohan
Stephen & Judith Schlieve	Earl Schwenk
James & Lynn Selig	David & Marian Teodoro
Pat Britz/Vashon Community Council	
Tom Davis/Puget Power	
Steve Densley/Pacific Telecom	
King County Fire District #13	
Robert Moore/Dockton Water Assn.	
Cheryl Paras/Washington Natural Gas	
Larry Underdahl/METRO	
Vashon Parks District	
Vashon Sewer District	
Tommy Burdette, King County Public Works	
Tom Eksten, King County Office of Open Space	
Dennis Gorley, King County Public Works	
Bill Hoffman, King County Public Works	
Glen Kost, King County Parks	
Jesse Krail, King County Public Works	
Rod Matsuno, King County Public Works	
Lloyd Neal, King County Public Works	
Lisa Pringle, DDES/Land Use Services Division	
Peter Ringen, King County Public Works	
Gary Samek, King County Public Works	
Paul Tanaka, King County Public Works	
Arthur Thornbury, Metropolitan King County Council	
Charlie Sundberg, King County Historical Preservation	
William Vlcek, King County Public Works	
Michael Wilkins, King County Property Services Division	

NOTICE OF
RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before October 13, 1995. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before October 20, 1995. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless within twenty (20) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE AUGUST 23, 1995 PUBLIC HEARING ON DEPARTMENT OF PUBLIC WORKS FILE NO. V-2188, CLIFFORD FREED/DIVISION STREET ROAD VACATION APPLICATION:

James N. O'Connor was the hearing Examiner in this matter. Participating in the hearing were Dennis Gorley/Department of Public Works, Clifford Freed, Fred Kaseburg, Frances Honeycutt, Elbert Honeycutt, Francis Prentice, Kenyon Luce, Earl B. Schwenk, Larry Pendergast, and Norman W. Doane.

The following exhibits were offered and entered into the record:

August 23, 1995:

Exhibit No. A	Department of Public Works, report on V-2188, to the King County Hearing Examiner, prepared for public hearing August 23, 1995
Exhibit No. 1	Petition transmittal letter, dated October 28, 1994 to Department of Public Works, from Clerk of the Council
Exhibit No. 2	Petition to vacate Division Street
Exhibit No. 3	Addendum to petition for vacation of County Road
Exhibit No. 4	Copy of survey map

Exhibit No. 5	Copy of deposit check
Exhibit No. 6	Copy of assessor's map depicting vicinity of vacation area
Exhibit No. 7	Copy of plat map of Avilion Tracts
Exhibit No. 8	Puget Sound Power and Light Company letter, dated January 25, 1995
Exhibit No. 9	Puget Sound Power and Light Company response, dated June 1, 1995
Exhibit No. 10	Washington Natural Gas Company response, dated February 2, 1995
Exhibit No. 11	Pacific Telecommunication response, received January 13, 1995
Exhibit No. 12	Vashon Sewer District letter, dated August 16, 1995
Exhibit No. 13	Dockton Water Company Water District & North Sewer District response, dated February 6, 1995
Exhibit No. 14	METRO response, dated January 16, 1995
Exhibit No. 15	King County Department of Development and Environmental Services letter, dated February 28, 1995
Exhibit No. 16	King County Property Services response, dated January 18, 1995
Exhibit No. 17	Memorandum, to Property Services, from Roads and Engineering Services Section, dated April 4, 1995
Exhibit No. 18	Memorandum, to Roads and Engineering Services Section, from Property Services, dated June 19, 1995/with attached appraisal
Exhibit No. 19	King County Traffic and Planning response, dated March 22, 1995
Exhibit No. 20	King County Transportation Planning response, dated March 24, 1995
Exhibit No. 21	King County Road Maintenance Section response dated April 7, 1995
Exhibit No. 22	King County Parks response, dated May 12, 1995
Exhibit No. 23	King County Office of Open Space response, dated January 24, 1995
Exhibit No. 24	King County Office of Historical Preservation response dated January 20, 1995
Exhibit No. 25	Vashon Parks District response, dated January 24, 1995
Exhibit No. 26	King County Fire District response, dated January 19, 1995
Exhibit No. 27	Letter from James and Lynn Selig, dated November 8, 1994
Exhibit No. 28	Letter from Thad and Nancie Clark, dated November 9, 1994
Exhibit No. 29	Letter from Larry and Charlotte Pendergast, dated November 13, 1994/with attached letters
Exhibit No. 30	Letter from William D. Ebright, dated November 15, 1994
Exhibit No. 31	Letter from Kenyon E. Luce, dated November 18, 1994
Exhibit No. 32	Letter from Stephen R. Schlieve, dated November 21, 1994
Exhibit No. 33	Letter from Earl B. Schwenk, dated November 22, 1994
Exhibit No. 34	Letter from Norman W. Doane, dated November 25, 1994
Exhibit No. 35	Letter from Elbert J. Honeycutt, dated November 28, 1994/with maps
Exhibit No. 36	Letter from petitioner's attorney, Fred Kaseburg, dated January 9, 1995, to Roads and Engineering Division
Exhibit No. 37	Letter from petitioner's attorney, Fred Kaseburg, dated February 8, 1995, to Roads and Engineering Division/with two letters from Dockton Water Association, dated February 6, 1995
Exhibit No. 38	Letter from petitioner's attorney, Fred Kaseburg, dated February 17, 1995, to Roads and Engineering Division/with letter from Geometrix Surveying, Inc.
Exhibit No. 39	Letter from petitioner's attorney, Fred Kaseburg, dated March 6, 1995, to Roads and Engineering Division
Exhibit No. 40	Letter from petitioner's attorney, Fred Kaseburg, dated March 13, 1995, to Roads and Engineering Division
Exhibit No. 41	Letter from Mayo and Francis Prentice dated March 24, 1995
Exhibit No. 42	Letter from petitioner's attorney, Fred Kaseburg, dated March 27, 1995
Exhibit No. 43	Letter from King County Executive, dated June 1, 1995, to Councilmember Kent Pullen
Exhibit No. 44	Letter from petitioner's attorney, Fred Kaseburg, dated June 2, 1995, to Roads and Engineering Division/with 1) "Some History Of Summerhurst Beach" and 2) road vacation worksheet dated February 6, 1995
Exhibit No. 45	Copy of check for compensation for \$15,645.13
Exhibit No. 46	Letter from petitioner's attorney, Fred Kaseburg, dated June 12, 1995, to Roads and Engineering Division/with two executed deeds for Point Piner Road
Exhibit No. 47	Letter from Roads and Engineering Division, dated June 11, 1995, to petitioner, requesting compensation
Exhibit No. 48	Road vacation worksheet V-2188.XLS
Exhibit No. 49	Proposed Ordinance 95-523
Exhibit No. 50	Affidavit of posting
Exhibit No. 51	Notice of Hearing
Exhibit No. 52	Letter from petitioner's attorney, Fred Kaseburg, dated August 10, 1995, to Roads and Engineering Division
Exhibit No. 53	Copy of Notice of Hearing, dated August 9, 1995
Exhibit No. 54	Affidavit of Publication, dated August 11, 1995
Exhibit No. 55	Letter from Vashon Sewer District, dated August 22, 1995, to King County Department of Public Works/with attached Easement For Sewer Lines
Exhibit No. 56	Letter from Vashon Sewer District, dated August 21, 1995, to King County Department of Public Works
Exhibit No. 57	Map, identifying homeowner's property lines
Exhibit No. 58	Assessor's map
Exhibit No. 59	Letter from Dockton Water Association, dated September 18, 1993, to James N. O'Connor, King County Hearing Examiner
Exhibit No. 60	King County Hearing Examiner's report and recommendation, dated October 13, 1993, and King County Hearing Examiner's report and recommendation, dated July 21, 1993
Exhibit No. 61	Written testimony from Jim and Lynn Selig
Exhibit No. 62	Letter from Dockton Water Association, dated May 20, 1994, to Mr. Pendergast

Pursuant to administrative continuance:

Exhibit No. 63	Letter dated August 25, 1995, to Examiner from Kenyon Luce
Exhibit No. 64	Letter dated September 4, 1995, to Examiner from Larry Pendergast
Exhibit No. 65	Letter dated September 11, 1995, to Examiner from Larry Pendergast, with map and photos enclosed
Exhibit No. 66	Letter dated September 8, 1995, to Examiner from Elbert & Ione Honeycutt
Exhibit No. 67	Letter dated September 5, 1995, to Examiner from Norman Doane
Exhibit No. 68	Letter dated September 8, 1995, to Examiner from Judith Schlieve
Exhibit No. 69	Letter dated September 11, 1995, to Examiner from Ronald & Linda Greene
Exhibit No. 70	Letter dated September 12, 1995, to Examiner from Fred Kaseburg, with enclosures
Exhibit No. 71	Letter dated September 11, 1995, to Examiner from William Ebright
Exhibit No. 72	Memo dated September 20, 1995, to Examiner from Peter Ringen, with enclosures

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